

Message Text

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PAGE 01 STATE 153313

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R 161818Z JUL 74

FM SECSTATE WASHDC

TO AMEMBASSY TAIPEI

C O N F I D E N T I A L STATE 153313

E.O. 11652: GDS

TAGS: EAID, PINS

SUBJECT: SECTION 32 FOREIGN ASSISTANCE ACT

FOLLOWING IS A REPEAT

QUOTE

R 042315Z APR 74

FM SECSTATE WASHDC

TO AID PRIN POSTS

AMEMBASSY ATHENS

AMEMBASSY BEIRUT

AMEMBASSY CARACAS

AMEMBASSY HELSINKI

AMEMBASSY JIDDA

AMEMBASSY KUALA LUMPUR

AMEMBASSY LISBON

AMEMBASSY MADRID

AMEMBASSY OUAGADOUDOU

AMEMBASSY TEL AVIV

AMEMBASSY VIENNA

INFO USCINCEUR VAIHAIGEN GERMANY

USCINCSO

CINCPAC HONOLULU HI

AIDAC

JOINT STATE/AID MESSAGE

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PAGE 02 STATE 153313

1. SUMMARY. THIS MESSAGE PROVIDES INFORMATION ON A NEW PROVISION OF THE FOREIGN ASSISTANCE ACT (FAA) OF 1973 AND REQUESTS AFFECTED MISSIONS TO CABLE APPROPRIATE RESPONSE PRIOR TO APRIL 22.

2. SECTION 32 OF THE FAA OF 1973 IS AS FOLLOWS:

'IT IS THE SENSE OF CONGRESS THAT THE PRESIDENT SHOULD DENY ANY ECONOMIC OR MILITARY ASSISTANCE TO THE GOVERNMENT OF ANY FOREIGN COUNTRY WHICH PRACTICES THE INTERNMENT OR IMPRISONMENT OF THAT COUNTRY'S CITIZENS FOR POLITICAL PURPOSES.'

3. EMBASSIES ARE REQUESTED TO PROVIDE ASSESSMENT OF HOW THIS LEGISLATION COULD AFFECT THE STATUS OF ASSISTANCE PROGRAMS IN THEIR COUNTRIES. SPECIFICALLY, WE WOULD APPRECIATE ASSESSMENTS OF THE EXTENT AND NATURE, IF ANY, OF THE INTERNMENT OR IMPRISONMENT OF CITIZENS FOR POLITICAL PURPOSES; WHETHER THROUGH LEGISLATION AND/OR PRACTICE, THERE IS A CONSISTENT PATTERN OF RELIABLY ATTESTED VIOLATION OF THE RIGHT TO BE FREE OF ARBITRARY DETENTION AND CERTAIN OTHER CLOSELY RELATED RIGHTS (SEE PARA 8 (B) BELOW) AND THE POSITION OF THE HOST GOVERNMENT ON THIS MATTER. NO REPRESENTATIONS TO HOST GOVERNMENTS SHOULD BE MADE IN DEVELOPING THIS INFORMATION. PREVIOUS REPORTS MAY BE REFERENCED. IF IT APPEARS TO EMBASSY THAT CONDITION O AT WHICH SEC. 32 DIRECTED MAY EXIST, IT IS REQUESTED TO SUGGEST ANY OPPORTUNITIES FOR APPROPRIATE US ACTION OR REPRESENTATION TO IMPROVE THE SITUATION, INCLUDING COMMENTS ON APPROPRIATENESS AND PROBABLE EFFECT OF DENYING ECONOMIC OR MILITARY ASSISTANCE ON BASIS OF SEC. 32.

4. FOR YOUR BACKGROUND, OTHER FAA PROVISIONS, SHOWING RELATED CONGRESSIONAL CONCERN AND INTENT ARE SECTION 102 (STATEMENT OF POLICY) SECTIONS, 201(B), 211 (A), AND 251(B), DEALING WITH THE RESPONSIVENESS OF GOVERNMENTS TO THE CONCERNS OF THEIR PEOPLE, RULE OF LAW, (AND INDIVIDUAL FREEDOMS, SECTION 207(A), CALLING FOR 'THE ENCOURAGEMENT OF STRONG ECONOMIC, POLITICAL, AND SOCIAL INSTITUTIONS NEEDED FOR A PROGRESSIVE DEMOCRATIC SOCIETY',
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PAGE 03 STATE 153313

AND SECTION 501 DESCRIBING ONE OBJECTIVE OF MILITARY ASSISTANCE AS 'CREATING AN ENVIRONMENT OF SECURITY AND STABILITY IN THE DEVELOPING FRIENDLY COUNTRIES ESSENTIAL TO THEIR MORE RAPID SOCIAL, ECONOMIC AND POLITICAL PROGRESS.'

5. A. 'POLITICAL PRISONERS' IS NOT DEFINED. AN AMENDMENT TO REQUIRE CUTTING OFF ASSISTANCE FAILED OF

ADOPTION AFTER DEBATE IN WHICH DIFFICULTY OF DEFINITION NOTED AND FROM WHICH IT WOULD APPEAR THAT IN ORDER GIVE EFFECT OF TOTALITY OF CONGRESSIONAL PURPOSE EMBODIED IN ACT, EXECUTIVE SHOULD PROCEED CASES BY CASE ON BASIS OF ALL FACTS AND WITH REGARD TO ALL PURPOSES OF ACT, GIVING FULL AND DUE WEIGHT TO INTEREST IN PROMOTING RESPECT FOR RULE OF LAW AND HUMAN RIGHTS WHERE ERODED OR VIOLATED BY POLITICAL IMPRISONMENTS.

(B) IN EFFORT TO GIVE EFFECT TO SENSE OF CONGRESS EXPRESSED IN SECTION 32, B WE BELIEVE DIFFICULTY IN DEFINING 'POLITICAL PRISONER' CAN BEST BE DEALT WITH BY REFERENCE TO STANDARD ENJOYING ALREADY ESTABLISHED INTERNATIONAL APPROVAL AND RESPECT. ACCORDINGLY, IN APPRAISING DEGREE TO WHICH PARTICULAR SITUATIONS MAY COME WITHIN SECTION 32, EMBASSY SHOULD CONSIDER (A) WHETHER PERSONS HAVE BEEN ARRESTED, DETAINED OR IMPRISONED ARBITRARILY IN THE SENSE OF ARTICLE 9 OF UN DECLARATION OF HUMAN RIGHTS (ARTICLE 9 READS: 'NO ONE SHALL BE SUBJECT TO ARBITRARY ARREST, DETENTION OR EXILE. FOR TEXT OF DECLARATION, SEE 5 WHITEMAN DIGEST 237-242.)

(B) WHETHER BY LAW OR IN PRACTICE SUCH PERSONS ARE DEPRIVED OF (1) RIGHTS UNDER ARTICLES 10 AND 11 OF UNIVERSAL DECLARATION RELATING TO PROPER CHARGES AND TRIAL AND/OR (2) RIGHTS UNDER ARTICLES 18, 19, 20 AND 21, RELATING TO SUCH FUNDAMENTAL POLITICAL FREEDOMS AS FREEDOM OF THOUGHT AND CONSCIENCE, OF OPINION AND EXPRESSION, OF PEACEFUL ASSEMBLY AND ASSOCIATION AND PARTICIPATION IN SELF-GOVERNMENT. WHILE SUCH TESTS MIGHT INCLUDE PERSONS ARBITRARILY IMPRISONED BECAUSE OF RACE OR RELIGION OR SOME OTHER FACTOR RATHER THAN STRICT POLITICS, THIS RESULT APPEARS REASONABLE AND NOT INCONSISTENT WITH CONGRESSIONAL PURPOSES AUTHORITY OF UNIVERSAL DECLARATION OF HUMAN RIGHTS AS INTERNATIONAL CONFIDENTIAL

CONFIDENTIAL

PAGE 04 STATE 153313

STANDARD IS EVIDENCED BY ITS ADOPTION BY UN GENERAL ASSEMBLY IN 1948 BY OVERWHELMING MAJORITY IN FURTHERANCE UN'S DUTY UNDER ARTICLES 55 AND 56 OF UN PR CHARTER TO PROMOTE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS - A DUTY IN THE DISCHARGE OF WHICH ALL MEMBERS ARE PLEDGED UNDER ARTICLE 55 TO COOPERATE.

(C) FINALLY, AID/STATE BELIEVE CONGRESS PRINCIPALLY CONCERNED ABOUT SUBSTANTIAL AND CONTINUED VIOLATIONS OF ABOVE STANDARDS OCCURRING AS MATTER OF OFFICIAL POLICY OR OF GROSS NEGLIGENCE ON PART OF GOVERNMENT.

6. SINCE, IN ACCORDANCE SECTION 32, 'POLITICAL PRISONER' FACTOR AS ABOVE DISCUSSED WILL BE EVALUATED IN CONNECTION NEW OR CONTINUED ASSISTANCE PROGRAMS, POSTS SHOULD REVIEW PAST REPORTING AND PRESENT SITUATION IN LIGHT

STANDARDS OUTLINED ABOVE AND PROVIDE SUCH ADDITIONAL INFORMATION ANALYSIS AND RECOMMENDATION AS MAY BE HELPFUL TO ONGOING EVALUATION. IN ANY EVENT, APPROPRIATE ACKNOWLEDGEMENT PRESENT TELEGRAM AND CABLE REPORT OF ANY EMBASSY ASSESSMENT WOULD BE APPRECIATED BY APRIL 22, SINCE CONGRESSIONAL HEARINGS ON FY 1976 ASSISTANCE PROGRAMS ARE SCHEDULED TO START IN EARLY MAY, AND THIS SUBJECT MAY WELL BE RAISED IN HEARINGS.

7. IN PROVIDING ANY DETAILED ANALYSIS IN LIGHT STANDARDS ABOVE OUTLINED, POSTS MAY FIND FOLLOWING CONSIDERATIONS RELEVANT:

(1) THE LEGAL/JUDICIAL PROCESSES WHICH RELATE TO THE ARREST, DETENTION AND TRIAL OF THE COUNTRY'S CITIZENS.

(2) WHETHER THE COUNTRY'S LAW PROHIBITS ARBITRARY ARREST AND DETENTION.

(3) WHAT REMEDIES (DEFENSES; OPPORTUNITIES TO CHALLENGE IN COURT; OPPORTUNITIES TO SECURE REDRESS) THE LAW PROVIDES TO A PERSON WHO MAY BE ARBITRARILY ARRESTED OR DETAINED OR DENIED FAIR AND OPEN TRIAL WITH REASONABLE PROMPTNESS.

(4) SPECIFIC FACTS RELEVANT TO CASES WHICH HAVE GIVEN CONFIDENTIAL

CONFIDENTIAL

PAGE 05 STATE 153313

RISE TO A POLITICAL PRISONER ISSUE WITH ATTENTION TO WHETHER THERE IS A CONSISTENT PATTERN OF RELIABLY ATTESTED VIOLATION OF THE RIGHT TO BE FREE OF ARBITRARY ARREST, DETENTION OR IMPRISONMENT.

(5) AS DISCUSSED ABOVE, ANY OPPORTUNITIES FOR APPROPRIATE U.S. ACTION OR REPRESENTATION TO IMPROVE THE SITUATION, AND COMMENT ON THE APPROPRIATENESS AND PROBABLE EFFECT OF DENYING ECONOMIC OR MILITARY ASSISTANCE BECAUSE OF THE POLITICAL PRISONER ISSUE.

(6) FACTORS IN THE POLITICAL AND ECONOMIC ENVIRONMENT OF THE COUNTRY WHICH ARE RELEVANT TO THE ENCOURAGEMENT OF THE RULE OF LAW AND THE STRENGTHENING OF FREEDOM AND OPPORTUNITY FOR ITS CITIZENS.

8. ALTHOUGH FOREIGN MILITARY SALES ACT CREDITS DO NOT UNDER FMSA LEGALLY CONSTITUTE 'MILITARY ASSISTANCE', RESPONSE FROM ATHENS ALSO REQUESTED.

9. DEFENSE CONCURS. RUSH UNQUOTE KISSINGER

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